

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ALBERTO RIVERA MONROY and IRMA
PARRA-RIVERA, husband and wife,

Plaintiffs,

v.

REAL TIME RESOLUTIONS, INC.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., and MTC
FINANCIAL INC. d/b/a TRUSTEE CORPS.

Defendants.

No.

COMPLAINT

DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs, ALBERTO RIVERA-MONROY and IRMA PARRA-RIVERA, husband and wife, collectively (“Plaintiff”) by and through counsel and bring this action against Defendants REAL TIME RESOLUTIONS, INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and MTC FINANCIAL INC., d/b/a TRUSTEE CORPS, to enjoin the defendants’ attempt to foreclose upon Plaintiff’s homestead via nonjudicial means and for all damages, including those allowed under the Fair Debt Collection Practices Act (“FDCPA”), the Washington Consumer Protection Act (“CPA”), and the Real Estate Settlement Procedures Act (“RESPA”), resulting therefrom because the Subject Deed of Trust the Defendants’ actions are based upon was reconveyed in 2009. Plaintiff states the following allegations:

I. PARTIES

1. Plaintiff owns and lives at the real property located at 23829 SE 248th Street, Maple Valley WA 98038, further identified as:

Lot(s) 57, Belmont Woods Division II, according to the Plat thereof recorded in Volume 172 of Plats, Page(s) 77 through 85, Records of King County, Washington, situated in the County of King, State of Washington.

2. Defendant Real Time Resolutions, Inc. (“RTR”) is a mortgage servicing company based out of Dallas, Texas. RTR purports to be the beneficiary of certain Deed of Trust under Instrument No. 20070301001246, as recorded in the official records of the Office of the Recorder of King County, Washington.

3. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a foreign corporation doing business out of Reston, Virginia. MERS maintains an electronic registry of mortgages originated in the United States; it keeps track of transfers of and modifications to servicing rights and ownership of mortgage loans. MERS declares to be the Beneficiary of the Deed of Trust under Instrument No. 20070301001246, as recorded in the official records of the Office of the Recorder of King County, Washington, securing Plaintiff’s Property in second lien position.

4. Defendant MTC Financial, Inc., d/b/a Trustee Corps. (“Trustee Corps”), is a Washington corporation in the business of foreclosing of real property through nonjudicial means on behalf of other entities. In this case, Trustee Corps acted on behalf of defendant RTR in effectuating a nonjudicial foreclosure upon Plaintiff’s home and setting the sale date for October 1, 2021.

5. At all times relevant, the Defendants are principal/agent or representative of one another and have acted in concert in their attempt to declare a debt owed and to effectuate a nonjudicial foreclosure to repossess Plaintiff's homestead. The defendants are liable to Plaintiff jointly and severally under the legal theories expressed herein.

1 **II. JURISDICTION AND VENUE**

2 6. Defendants' attempt to foreclose upon a deed of trust which had been reconveyed
 3 violates the FDCPA, 15 U.S.C. §1692f(6)(A) and (B), and other federal and state laws., including
 4 RESPA.

5 7. Defendants' conduct also violates the Washington Consumer Protection Act,
 6 RCW 19.86, *et seq.*, and tort laws.

7 8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (general
 8 federal question), as well as supplemental jurisdiction for state law claims pursuant to 28
 9 U.S.C. § 1337(a). If Plaintiff's federal claims against Trustee Corps failed, alternatively,
 10 Trustee Corps serves as a nominal defendant for purpose of curbing its attempt to conduct a
 11 nonjudicial foreclosure of Plaintiff's Property on behalf of RTS. The Court has diversity
 12 jurisdiction pursuant to 28 U.S. Code § 1332 because the Plaintiff and the defendant RTR and
 13 MERS are citizens of different states, and the amount in dispute exceeds \$75,000.

14 9. Plaintiff seeks declaratory relief as available pursuant to 28 U.S.C. §§2201 and
 15 2202.

16 10. Venue is proper in this District under 28 U.S.C. §1331(b) because the Defendants
 17 conduct affairs and transacts business in this District, the unlawful acts giving rise to this
 18 complaint occurred in this District, and the Plaintiff in this District.

19 **III. FACTUAL ALLEGATIONS**

20 11. Plaintiff acquired two loans at the same time to finance their home in 2007. They
 21 are current on the first mortgage. The second mortgage was reconveyed in 2009. The second
 22 mortgage was evidenced by a Deed of Trust recorded in the official records of King County,
 23 Washington, under Instrument No. 20070301001246 (Exhibit A, Deed of Trust). The
 24 Reconveyance is evidenced by a "Substitution of Trustee and Deed of Conveyance" dated April
 25 23, 2009, and recorded in the official records of King County under Instrument No.
 26 20090603001231 (Exhibit B, Reconveyance).

27 12. Despite the reconveyance, RTR launched an aggressive debt collection campaign
 against Plaintiff on the second mortgage which culminated with RTR's referral to Defendant

1 Trustee Corps for nonjudicial foreclosure of Plaintiff's homestead (Exhibit C, Referral of
2 Foreclosure).

3 13. The nonjudicial foreclosure documents issued by Trustee Corps and RTR all
4 referenced the Deed of Trust that was reconveyed 11 years prior (Exhibit D, Composite of
5 Notice of Default dated 4/29/2021; Assignment of Deed of Trust recorded 5/12/2020; Notice of
6 Trustee's Sale recorded 5/26/2021).

7 14. The document, entitled "Substitution of Trustee and Deed of Conveyance" and
8 referenced herein as "the Reconveyance" was signed in part by defendant MERS for the
9 Substitution of Trustee. The Reconveyance portion was signed by Nationwide Title Clearing
10 Inc., the successor trustee. The Instrument references the Subject Deed of Trust throughout and
11 states that reconveyance of the Property was based on satisfaction of the indebtedness:

12 NATIONWIDE TITLE CLEARING, INC., as successor Trustee under said
13 Deed of Trust and as successor Trustee, **having received from the**
14 **beneficiary under said Deed of Trust a written request to reconvey,**
15 **reciting that the obligation(s) secured by the Deed of Trust have been**
16 **fully satisfied**, does hereby grant, bargain, sell and convey, unto the parties
17 entitled thereto all right, title and interest which was heretofore acquired by
18 said Trustee under said Deed of Trust.

19 (Exhibit B, Reconveyance)

20 15. The Reconveyance was picked up and relied upon by the public. Evidence of
21 such reliance is found in the Commitment for Title Insurance issued by WFG National Title
22 Insurance Company, issued under Order No. 20-211533 (Exhibit E, Title Commitment).
23 Schedule B of the Commitment shows one Mortgage Lien recorded in the amount of
24 \$318,400.00 recorded on March 1, 2007, under Instrument No. 20070301001245, which
25 represents the First Mortgage Lien. However, there is no reference whatsoever of the Second
26 Lien/the Subject Deed of Trust as recorded under Instrument No. 20070301001246.
27

28 16. Despite the Reconveyance appearing clearly on the Official Records of King
29 County, RTR, via defendant Trustee Corps, declared default and commenced nonjudicial
30 foreclosure upon Plaintiff and their Property (Exhibit F, Request for Service made by Trustee

1 Corps). The Notice of Default issued by Trustee Corps specifies that payments had not been
 2 made from **June 1, 2009, through April 19, 2021 in the amount of \$123,946.98** and to cure
 3 the default, Plaintiff would have to pay said amount, as well as \$2,074.74 in trustee's fees and
 4 costs (Exhibit D, Notice of Default).

5 17. To effectuate the nonjudicial foreclosure of Plaintiff's property, MERS executed
 6 and caused to be recorded an Assignment of Deed of Trust. This Assignment of Deed of Trust
 7 was signed and dated **May 12, 2020**, whereupon MERS purportedly assigned the very Deed of
 8 Trust that was reconveyed 11 years prior, to RTR (Exhibit G, Assignment of Deed of Trust).

9 18. Upon learning about the Defendants' attempt of nonjudicial foreclosure, on **June**
 10 **9, 2020**, Plaintiff served RTR with a Notice of Error pursuant to Regulation X of the Mortgage
 11 Servicing Act under RESPA, 12 CFR §1024.35, alerting RTR to the fact that the Subject Deed
 12 of Trust was reconveyed on June 3, 2009 (Exhibit H, NOE).

13 19. Defendant RTR responded to Plaintiff via letter dated **June 22, 2020**, which
 14 states:

15 **At this time, we do not have record that this loan was refinanced or**
 16 **otherwise satisfied.** If you have documentation showing that you are not
 17 responsible for the account in question, please forward it so that we may
 18 research this matter further.

19 It is our position that this account remains outstanding and collectable as
 20 indicated by the enclosed Note, bearing your signature. We have also
 21 included a copy of copy [sic] of the signed Deed of Trust that secures the loan
 22 to the associated property.

23 (Exhibit I, RTR's Letter of June 22, 2020).

24 20. On May 26, 2021, Trustee Corps recorded a Notice of Trustee's Sale,
 25 announcing that RTR will, through Trustee Corps, sell Plaintiff's Property at auction on
 26 **October 1, 2021** (Exhibit J, Notice of Trustee's Sale).

27 21. It is inexplicable how RTR failed to discern from the Official Records of King
 28 County that the Subject Deed of Trust being foreclosed upon was reconveyed, while a third-
 29 party was able to recognize the absence of a second lien on Plaintiff's Property.

22. Trustee Corps, in its business of handling nonjudicial foreclosures, routinely checks for military status, bankruptcy status and title status. Yet, it failed to discern from the Official Records of King County the fact that the Subject Deed of Trust was reconveyed 11 years prior.

23. Plaintiff has relied, and continue to rely upon the representations made within the Reconveyance as recorded in the Official Records of King County, Instrument No. 20090603001231. Further, Plaintiff has never been notified by anyone or any entity that said Reconveyance was recorded by inadvertence, mistake, accident, or any reasons other than an intended act. In fact, no entity has ever sought to rescind the Reconveyance or reinstate the Subject Deed of Trust for any reasons during the past 11 years, as reflected by the Official Records of King County, Washington.

IV. CAUSES OF ACTION

CLAIM ONE: VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT

24. Plaintiff repeats and realleges and incorporate by reference the foregoing paragraphs.

25. According to the Notice of Default, payments have not been made since June 1, 2009. RTR was not the original loan servicer and became involved after the Loan was purportedly placed into default status. In the same Notice of Default, RTR is identified as the holder of "any Promissory Note or other obligation(s) secured by the Deed of Trust." Therefore, it appears that RTR was collecting the debt on behalf of another and meets the definition of a debt collector.

26. While the Fair Debt Collection Practices Act (FDCPA) regulates security interest enforcement activity, it does so only through 15 U.S.C.S. § 1692f(6). RTR's referral of the Property to Trustee Corps for nonjudicial foreclosure fall within the ambit of §1692f(6)(A) and (C) which prohibit the use of unfair or unconscionable means to collect or attempt to collect any debt based upon the:

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

- 1 (A) there is no present right to possession of the property claimed as collateral
 2 through an enforceable security interest; or
 3 (C) the property is exempt by law from such dispossess or disablement.

4 27. RTR violated §1692f(6)(A) because the Reconveyance operated to extinguish
 5 the lien upon the Property in 2009. Yet, in 2020, when RTR ordered nonjudicial foreclosure
 6 of the Property through its agent Trustee Corps, RTR did not have any right to possession of
 7 the Property because the security interest was unenforceable at the time of the referral.

8 28. RTR violated §1692f(6)(B) because the same legal effect of the Reconveyance
 9 executed and recorded in 2009, operates to render Plaintiff's Property exempt or protected
 10 from RTR' attempt of dispossession.¹

11 29. RTR's violation of §1692f(6)(A) and (B) has caused financial injury to Plaintiff
 12 as they incurred time and resources to bring the Reconveyance to RTR's attention and to resist
 13 RTR's nonjudicial foreclosure. RTR's commencement of nonjudicial foreclosure has caused
 14 cloud of title of Plaintiff's Property, diminishing its marketability and the Plaintiff's earned
 15 equity. Furthermore, Plaintiff has incurred and continued to incur time and resources including
 16 attorney fees and costs to resist the nonjudicial foreclosure including the filing and prosecution
 17 of this action. Above all, Plaintiff would have to pay more than \$120,000 to save the Property
 18 from foreclosure. RTR's violation of §1692f(6)(A) and (B) entitles Plaintiff to all relief accorded
 19 by §1692k, including actual damages and reasonable attorney fees and costs.

20 30. Defendant Trustee Corps is a debt collector as defined under the FDCPA for
 21 purpose of §1692f(6). The definition includes any person who engages in any business the
 22 principal purpose of which is the enforcement of security interests. 15 U.S.C. §1692a(6).

23 31. Trustee Corps' commencement of nonjudicial foreclosure against Plaintiff violates
 24 §1692f(6)(A) because the Reconveyance operated to extinguish the lien upon the Property as of
 25 2009. When Trustee Corps recorded the Notice of Trustee's Sale setting the sale of Plaintiff's
 26 Property for October 2021, no entity had a right to possession of the Property through an
 27 enforceable security interest based on a lien in second position. Similarly, Trustee Corps violated

¹ *Dowers v. Nationstar Mortgage, LLC*, 852 F.3d 964 (9th Cir. 2017).

1 §1692f(6)(B) because the same legal effect of the Reconveyance, executed and recorded in 2009,
 2 provides that Plaintiff's Property is exempt or protected from Trustee Corps' nonjudicial
 3 foreclosure.

4 32. Trustee Corps' violation of §1692f(6)(A) and (B) has caused financial injury to the
 5 Plaintiff. Trustee Corps' pursuit of nonjudicial foreclosure has directly caused cloud of title of
 6 Plaintiff's Property diminishing its marketability and distinguished Plaintiff's earned equity.
 7 Furthermore, Plaintiff has incurred and continued to incur time and resources including attorney
 8 fees and costs to resist the nonjudicial foreclosure as well as the filing and prosecution of this
 9 action. Above all, Plaintiff would have to pay more than \$120,000 to save the Property from
 10 foreclosure. Thus, Trustee Corps' violation of §1692f(6)(A) and (B) entitles Plaintiff to all relief
 11 accorded by §1692k, including actual damages and reasonable attorney fees and costs.

12 **CLAIM TWO: VIOLATION OF REAL ESTATE SETTLEMENT PROCEDURES ACT**

13 33. Plaintiffs repeat and reallege and incorporate by reference to the foregoing
 14 paragraphs.

15 34. Section 2605(e) of the Real Estate Settlement Procedures Act ("RESPA") requires
 16 that servicers of federally related mortgage loans respond in a prescribed time and manner to
 17 qualified written requests from borrowers.12 U.S.C.S. § 2605(e). Regulation X is the
 18 implementing regulation. 12 C.F.R. § 1024.35 provides error resolution procedures which require
 19 the loan servicer to conduct a reasonable investigation of the asserted error. 12 C.F.R. §
 20 1024.35(e)(1)(i)(B). RESPA provides for a private cause of action (12 U.S.C.S. § 2605(f)) to
 21 include violations of the implementing regulations 12 U.S.C.S. § 2601 et seq., including 12 C.F.R.
 22 §§ 1024.35, 1024.36, 1024.41, even if the underlying regulation does not specifically reference §
 23 2605(f).

24 35. It appears plainly from the face of RTR's Letter dated June 22, 2020, in response
 25 to Plaintiff's Notice of Error that the defendant failed to perform a reasonable investigation into
 26 the error notified by Plaintiff. The Letter, by its terms, did not mention the official title records of
 27 King County, Washington, or any other database of land records and yet it concluded that RTR

1 did not have any record that the subject loan “**was refinanced or otherwise satisfied.**” A
 2 satisfaction of the subject loan is evidenced by the Reconveyance of the subject deed of trust
 3 appearing in the official records of King County, Washington. Where the Regulation requires a
 4 reasonable investigation and such investigation requires verification through the land title records,
 5 RTR failed to conduct such an investigation.

6 36. RTR’s violation of RESPA has caused financial injury to the Plaintiff. RTR’s
 7 referral of the Property to Trustee Corps resulted in the pursuit of nonjudicial foreclosure against
 8 Plaintiff and their Property. The nonjudicial foreclosure has directly causes cloud of title and
 9 diminution of marketability as well as extinguished Plaintiff’s earned equity. Furthermore,
 10 Plaintiff has incurred and continued to time and resources including attorney fees and costs to
 11 resist the nonjudicial foreclosure as well as the filing and prosecution of this action. Above all,
 12 Plaintiff would have to pay more than \$120,000 to save the Property from foreclosure. Therefore,
 13 RTR’s violation of RESPA entitles Plaintiff to all relief accorded under the statute and regulations
 14 implementing the same, including actual damages and reasonable attorney fees and costs.

CLAIM THREE: VIOLATION OF DEED OF TRUST ACT

15 37. Plaintiff repeats and realleges and incorporate by reference the foregoing
 16 paragraphs.

17 38. The Subject Reconveyance recorded in King County Official Records constitutes
 18 proof that the Deed of Trust on the Second Mortgage of Plaintiff’s Property was reconveyed
 19 pursuant to RCW 61.24.110(1) as of April of 2009. The statute provides that “[i]f no objection is
 20 recorded within sixty days following recording of the notarized declaration, any lien of the deed
 21 of trust against the real property encumbered must cease to exist.” §61.24110(b). No objection
 22 appears in the public records of King County, Washington, and the Deed of Trust upon the second
 23 mortgage has ceased to exist. Therefore, MERS violated the Deed of Trust Act in assigning the
 24 Deed of Trust of the second mortgage lien to RTR. RTR violated the Deed of Trust Act through
 25 its actions, among them, its issuance of the Beneficiary Declaration in aid of the nonjudicial
 26

1 foreclosure, whereupon RTR claims to be the beneficiary of a deed of trust that was reconveyed
2 eleven years prior.

3 39. Defendant Trustee Corps violates the Deed of Trust for its failure to conduct the
4 cursory investigation into the existence of a valid deed of trust before commencing the nonjudicial
5 foreclosure proceeding. Without such valid deed of trust, Trustee Corps' status as successor
6 trustee is fictional or a nullity.
7

8 40. The Defendants' violation of the Deed of Trust Act, occurring in a chain of events
9 has caused financial injury to the Plaintiff. MERS' Assignment of Deed of Trust to RTR enabling
10 RTR to refer the Property to Trustee Corps which then pursued nonjudicial foreclosure against
11 Plaintiff and their Property. The nonjudicial foreclosure has directly caused cloud of title and
12 diminution of marketability as well as extinguished Plaintiff's earned equity. Furthermore,
13 Plaintiff has incurred and continued to incur time and resources including attorney fees and costs
14 to resist the nonjudicial foreclosure as well as the filing and prosecution of this action. Above all,
15 Plaintiff would have to pay more than \$120,000 to save the Property from foreclosure. Therefore,
16 the defendants' collective violation of the Deed of Trust Act entitles Plaintiff to all relief accorded
17 under the statute and regulations implementing the same, including actual damages and
18 reasonable attorney fees and costs.

19 **CLAIM FOUR: DECLARATORY JUDGMENT**

20 41. Plaintiff repeats and realleges and incorporate by reference the foregoing
21 paragraphs.
22

23 42. The current nonjudicial foreclosure of the Plaintiff's home is based upon the Deed
24 of Trust that was actually reconveyed in 2009. The Reconveyance effectively eliminated the
25 security interest provided for by the Deed of Trust. The Reconveyance has been relied upon by
26 the Plaintiff and the public, evidence by the Title Commitment obtained by the Plaintiff in 2020.
27

43. Even after having been alerted to the Reconveyance, none of the Defendants

1 claimed any inadvertence, mistake, accident, or any other reasons. No action was ever taken by
 2 MERS or any other entity to rescind the Substitution of Trustee and Reconveyance and to reinstate
 3 the Subject Deed of Trust and eleven years have passed since the recording of the Instrument.
 4 Thus, the Reconveyance remains valid and enforceable.

5 44. There exists an actual justiciable conflict or controversy as between the Plaintiff
 6 and the Defendants: Plaintiff contends that the Reconveyance extinguished the security interest
 7 in the Subject Deed of Trust, and the Defendants are attempting to foreclose upon Plaintiff
 8 based on the same Deed of Trust. Therefore, Plaintiff seeks a declaratory judgment under RCW
 9 7.24.020 from the Court entitling Plaintiff to be freed from the current nonjudicial foreclosure
 10 initiated by the defendants.

12 45. Plaintiff is entitled to a Declaratory Judgment from this Court as to the status of
 13 their Property which is under an imminent nonjudicial foreclosure. Plaintiff prays for a
 14 Declaratory Judgment that restrains the impending nonjudicial foreclosure of Plaintiff's
 15 Property as currently being advanced by defendant Trustee Corps at the behest of defendants
 16 RTR and MERS.

18 **CLAIM FIVE: VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT**

19 46. Plaintiff repeats and realleges and incorporate by reference the foregoing
 20 paragraphs.

21 47. The Washington Supreme Court has held that it is possible for violations of the
 22 Deeds of Trust Act to constitute a violation of the Consumer Protection Act, even when there is
 23 no completed foreclosure sale and no allegation the plaintiff has paid any foreclosure fees. The
 24 analysis of the elements of a Consumer Protection Act claim premised on alleged Deeds of Trust
 25 Act violations is identical to the analysis of the elements of a Consumer Protection Act claim
 26 premised on any other allegedly unfair or deceptive practice with a public interest impact
 27 occurring in trade or commerce that has allegedly proximately caused injury to a plaintiff's

1 business or property. To prove a cause of action under Washington's Consumer Protection Act
 2 ("CPA"), Plaintiff must prove five separate elements: (1) [an] unfair or deceptive act or practice;
 3 (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her
 4 business or property; and (5) causation.

5 48. MERS has acted and continues to act as a nominee for beneficiaries under deeds
 6 of trust in the State of Washington and beyond. There are millions of documents signed by and
 7 recorded in MERS' name that are recorded in the public records of every state in the Union. The
 8 public actively relies upon these documents to buy and sell real property and transfer title
 9 accordingly. Said purchase and sale transactions affect commerce directly.

10 49. In this case, MERS has caused for Assignments of Deed of Trust to be signed and
 11 recorded in its own name that directly conflicts with each other; one reconveyed a mortgage lien
 12 upon Plaintiff's property, and the other purports to assign the same mortgage lien to another
 13 entity. As such, MERS' documents are both deceptive and unfair; they deceptively induce
 14 reliance on the part of Plaintiff and the public where the information is contradictory. The
 15 unfairness stems from the exceedingly long period of time MERS allowed to pass between the
 16 creation and recording of these two documents.

17 50. RTR's activities as a mortgage servicer go beyond the borders of the states. Its
 18 handling of consumer mortgage accounts impacts an important public interest as consumers must
 19 depend on their lender or their servicer for the accuracy of the status of their accounts. Here, RTR,
 20 who is a complete stranger to the original transaction, caused for certain documents to be created,
 21 signed and recorded on the public records of King County, Washington, in order to foreclose on
 22 the Plaintiff's Property without a cursory investigation of the facts relating to said foreclosure.
 23 RTR has either intentionally or negligently overlooked the Subject Reconveyance in pursuit of
 24 an unlawful nonjudicial foreclosure.

25 51. RTR's complete failure to discern the Reconveyance of 2009, and its June 22,
 26 2020, letter to the Plaintiff, are both unfair and deceptive. Where the Reconveyance appears
 27 plainly on the Official Records, it was unfair for RTR to ignore it and to continue pursuing the

1 nonjudicial foreclosure. RTR's Letter to Plaintiff is deceptive in that it indicates RTR does not
 2 have "**record that this loan was refinanced or otherwise satisfied**" when in fact the
 3 Reconveyance can be located readily from the Official Records of King County.

4 52. Defendant Trustee Corps' sole business is nonjudicial foreclosure for profit.
 5 Trustee Corps' conduct affects consumers' real property, often results in the loss of a person's
 6 homestead. Trustee Corps uses the telephone, the internet and the mail to conduct its business
 7 beyond the borders of the State of Washington. Washington courts have deemed the business of
 8 nonjudicial foreclosure as one occurring in and affecting commerce.

9 53. The Washington Supreme Court has held that: "[a] foreclosure trustee must
 10 'adequately inform' itself regarding the purported beneficiary's right to foreclose, including at a
 11 minimum, a 'cursory investigation' to adhere to its duty of good faith." It is well-known that
 12 Trustee Corps business requires the verification of military status, bankruptcy status and title
 13 search as part of the conduct of nonjudicial foreclosure. As a matter of act, Trustee Corps
 14 regularly includes the cost of a title search in its foreclosure fees of real property. Yet, in this
 15 case, Trustee Corps processed the nonjudicial foreclosure based on the Subject Deed of Trust
 16 without any mention of the Subject Reconveyance. This proves that Trustee Corps either did not
 17 conduct the requisite investigation, or it did but simply omitted evidence of the Reconveyance of
 18 the Subject Deed of Trust. Regardless, Trustee Corps' failure violates the duty of good faith; it
 19 also constitutes an unfair or deceptive practice under the CPA.

20 54. The unfair or deceptive aspect of the WACPA is determined on a case-by-case
 21 basis. Neither intent nor actual deception must be proven for an act or practice to be deemed
 22 unfair or deceptive. Instead, the court asks the question of whether the defendant's conduct has
 23 the capacity to deceive as substantial portion of the public. Given the facts alleged herein, it is
 24 undeniable that the Defendants' conduct, individually and collectively, have the capacity to
 25 deceive a substantial portion of the public.

26 55. The Defendants' conduct has caused financial injury to Plaintiff. The Defendants'
 27 violation of the Deed of Trust Act, occurring in a chain of events, has caused financial injury to

1 the Plaintiff's Property and beyond. MERS' Assignment of Deed of Trust to RTR enabling RTR
 2 to refer the Property to Trustee Corps which then pursued nonjudicial foreclosure against Plaintiff
 3 and their Property. The nonjudicial foreclosure has directly caused cloud of title and diminution
 4 of marketability as well as extinguished Plaintiff's earned equity. Furthermore, Plaintiff has
 5 incurred and continued to incur time and resources including attorney fees and costs to resist the
 6 nonjudicial foreclosure as well as the filing and prosecution of this action. Above all, Plaintiff
 7 would have to pay more than \$120,000 to save the Property from foreclosure. Therefore, the
 8 defendants' collective violation of the Deed of Trust Act entitles Plaintiff to all relief accorded
 9 under the statute and regulations implementing the same, including actual damages and
 10 reasonable attorney fees and costs.

CLAIM SIX: NEGLIGENT MISREPRESENTATION

11 56. Plaintiff repeats and realleges and incorporate by reference the foregoing
 12 paragraphs.

13 57. The tort of negligent misrepresentation occurs when the defendant, in the course
 14 of business, profession, employment, or a transaction in which the defendant has a pecuniary
 15 interest, negligently supplies false information for the guidance of others in their business
 16 transactions, and the plaintiff justifiably relies on such information to his detriment.

17 58. MERS committed negligent misrepresentation against Plaintiff because it creates
 18 and maintains a database of mortgage information for profit. MERS is supposed to accurately
 19 keep track of transfers and modifications to servicing rights and ownership of mortgage loans.
 20 MERS' services are widely used by the real estate finance industry for residential and commercial
 21 mortgage loan recording trading. As such, the information that MERS provides or certifies must
 22 be precise and accurate.

23 59. MERS negligently supplied conflicting information to the Plaintiff and to the
 24 public by signing and allowing for two Assignments of Deed of Trust that directly conflict with
 25 each other: one reconveyed a mortgage lien upon Plaintiff's property, and the other purports to
 26 assign the mortgage lien to another entity for specific purpose of nonjudicial foreclosure.

1 60. MERS knew or should have known that entities such as RTR and Trustee Corps
 2 actively rely upon MERS' information to declare default and to commence foreclosure upon the
 3 collateral. MERS knew or should have known that documents bearing MERS' name and signature
 4 are actively relied upon by the public to transact in real property. Neither the Plaintiff nor the
 5 public had any option but to rely upon MERS' written representations as appear in the public
 6 records. If there is any inaccuracy in the recorded representations, MERS has an affirmative duty
 7 to correct the inaccuracy as soon as practicable. It was foreseeable to MERS that the conflict
 8 created by MERS' documents in this case, left uncorrected, would cause monetary and other
 9 damages to Plaintiff, including the possible loss of the place they call home.

10 61. MERS' negligent misrepresentation has proximately caused injury to Plaintiff and
 11 Plaintiff's Property. It caused Plaintiff to be insecure about the title status of their Property. It has
 12 diminished the Property's valuation and earned equity that Plaintiff has. Above all, Plaintiff
 13 would have to pay more than \$120,000 to save the Property from foreclosure. But for MERS'
 14 negligent misrepresentation, Plaintiff would not have to incur time and expenses to bring the issue
 15 to the attention of RTR, to resist the nonjudicial foreclosure and to prosecute the claims within
 16 this Complaint in federal court.

17 62. Defendant RTR, being a mortgage loan servicer, is in the business of servicing
 18 loans including enforcement of contractual terms allowing for the foreclosure of collaterals used
 19 to secure these loans. RTR receives compensation for its services which comes from payments
 20 made by the consumers on their mortgage loans. RTR has a duty to verify and confirm
 21 information not only about the loan accounts, but also the status of title of the property that secure
 22 the loans, especially for purpose of declaring default and referring the loans to foreclosure. In this
 23 case, RTR was not the original servicer and must take extra care to ensure the information it has
 24 received from another about the Plaintiff's loan and Property is accurate, including the status of
 25 the lien upon the Property serving as collateral.

26 63. RTR made negligent misrepresentations in its Declaration of Ownership which
 27 was used to facilitate the nonjudicial foreclosure of Plaintiff's home. On July 17, 2020, Wesley

1 Owens, Senior Vice President of RTR signed the document and certified under penalty of perjury
 2 that “Real Time Resolutions, Inc., is the holder of the Promissory Note (‘Note’) secured by a
 3 certain Deed of Trust encumbering the above referenced property.” ([Exhibit J, Declaration of](#)
 4 [Ownership](#)). However, as of July 17, 2020, the Subject Deed of Trust, which was reconveyed in
 5 2009, has not been challenged, corrected, modified, or withdrawn in any way. Thus, RTR
 6 negligently misrepresented that the Subject Deed of Trust was valid and enforceable, in its debt
 7 collection and its attempt to foreclose on the Plaintiff’s Property.

8 64. RTR’s negligent misrepresentation has proximately caused injury to Plaintiff and
 9 Plaintiff’s Property. It caused Plaintiff to be insecure about the title status of their Property. It has
 10 diminished the Property’s valuation and earned equity that Plaintiff has. RTR has been reporting
 11 to the credit reporting agencies that the Loan was in default and the Property is under foreclosure
 12 causing damages to Plaintiff’s credit standing. Above all, Plaintiff would have to pay more than
 13 \$120,000 to save the Property from foreclosure. But for RTR’s negligent misrepresentation,
 14 Plaintiff would not have to incur time and expenses to resist the nonjudicial foreclosure and to
 15 prosecute the claims within this Complaint in federal court.

16 65. Defendant Trustee Corps is in the business of nonjudicial foreclosure which
 17 encompasses the collection, creation and recordation of documents affecting land title records.
 18 Trustee Corps receives compensation directly from the consumers/property owners through cure
 19 payments and proceeds of sale of foreclosed properties. The documents created, collected, and
 20 recorded by Trustee Corps are relied upon by the public for accuracy in real estate transaction.

21 66. Trustee Corps made negligent misrepresentations in the foreclosure documents it
 22 generated and collected in facilitation of the nonjudicial foreclosure of Plaintiff’s home because
 23 it failed to notice the inconsistencies and inaccuracies represented within these documents, most
 24 notably is the Subject Reconveyance rendering Trustee Corps’ current nonjudicial foreclosure of
 25 Plaintiff’s Property improper and illegal. Thus, Trustee Corps negligently misrepresented that the
 26 Subject Deed of Trust was valid and enforceable in its attempt to foreclose on the Plaintiff’s
 27 Property.

1 67. Trustee Corps' negligent misrepresentation has proximately caused injury to
2 Plaintiff and Plaintiff's Property. It caused Plaintiff to be insecure about the title status of their
3 Property. It has diminished the Property's valuation and earned equity that Plaintiff has. It has led
4 to inaccurate credit information being reported to the credit reporting agencies affecting Plaintiff's
5 credit standing adversely. Above all, Plaintiff would have to pay more than \$120,000 to save the
6 Property from foreclosure. But for Trustee Corps' negligent misrepresentation, Plaintiff would
7 not have to incur time and expenses to bring the issue to the attention of RTR, to resist the
8 nonjudicial foreclosure and to prosecute the claims within this Complaint in federal court.

CLAIM SEVEN: NEGLIGENCE

10 68. Plaintiffs repeat and reallege and incorporate by reference to the foregoing
11 paragraphs.

12 69. At common law, every individual owes a duty of reasonable care to refrain from
13 causing foreseeable harm in his interactions with others. MERS owes Plaintiff a duty of care not
14 to create and record documents in the land title records that are false, misleading or simply
15 conflicting with one another. By its conduct in this case where, by the nature of its own business,
16 it was foreseeable that documents signed by MERS appearing in the public records of King
17 County, Washington, which are inconsistent and/or inaccurate, would cause injury and harm to
18 the Plaintiff and Plaintiff's Property.

19 70. But for MERS' negligence, Plaintiff would not have to be insecure about the title
20 status of their Property, experience a diminution in the valuation of their Property or any earned
21 equity, and diminution in their credit standing. Above all, Plaintiff would have to pay more than
22 \$120,000 to save the Property from foreclosure due to MERS's negligence. Without MERS'
23 negligence, Plaintiff would not have to incur time and expenses to resist the nonjudicial
24 foreclosure and to prosecute the claims within this Complaint in federal court.

25 71. Defendant RTR, being a mortgage loan servicer, has a duty to verify and confirm
26 information not only about the loan accounts, but also the status of title of the property that secure
27 the loans, especially for purpose of declaring default and referring the loans to foreclosure. In this

1 case, RTR was not the original servicer and must take extra care to ensure the information it has
 2 received from another about the Plaintiff's loan and Property is accurate, including the status of
 3 the lien upon the Property serving as collateral.

4 72. RTR was negligent in referring Plaintiff's Property for nonjudicial foreclosure,
 5 after Plaintiff had advised that the Subject Deed of Trust was reconveyed some 11 years prior.
 6 RTR' negligence was evidenced by its Letter of June 22, 2020, in which it asserted that it has "no
 7 record that this loan was refinanced or otherwise satisfied" where there is a Reconveyance
 8 recorded in the Official Records for all to see.

9 73. But for RTR'S negligence, Plaintiff would not have to be insecure about the title
 10 status of their Property, experience a diminution in the valuation of their Property or any earned
 11 equity, and diminution in their credit standing. Above all, Plaintiff would have to pay more than
 12 \$120,000 to save the Property from foreclosure due to RTS's negligence. Without RTS's
 13 negligence, Plaintiff would not have to incur time and expenses to resist the nonjudicial
 14 foreclosure and to prosecute the claims within this Complaint in federal court.

15 74. Defendant Trustee Corps, being in the business of nonjudicial foreclosure, has a
 16 duty to verify all facts prior to the commencement of a nonjudicial foreclosure of the Plaintiff.
 17 Under Washington law, a trustee has the duty to conduct a cursory factual investigation prior to
 18 the initiation of nonjudicial foreclosure. Has Trustee Corps fulfilled this duty properly, it would
 19 have located the Reconveyance and recognized that the Instrument bars the nonjudicial
 20 foreclosure as the lien upon the Property has been legally extinguished. Trustee Corps' failure of
 21 the cursory investigation prior to commencing the nonjudicial foreclosure constitutes simple
 22 negligence.

23 75. But for Trustee Corps' negligence, Plaintiff would not have to be insecure about
 24 the title status of their Property, experience a diminution in the valuation of their Property or any
 25 earned equity, and experience diminution of their credit standing. Above all, Plaintiff would have
 26 to pay more than \$120,000 to save the Property from foreclosure due to Trustee Corps'
 27 negligence. Without Trustee Corps' negligence, Plaintiff would not have to incur time and

1 expenses to resist the nonjudicial foreclosure and to prosecute the claims within this Complaint
2 in federal court.

V. PRAYER FOR RELIEF

4 WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants
5 MERS, Real Time Resolutions, Inc., and MTC Financial, Inc., d/b/a Trustee's Corps. for the
6 following:

7 1) For declaratory relief that the Reconveyance of the Property recorded in 2009
8 has the legal force and effect of extinguishing the second mortgage lien upon the Property and
9 injunctive relief restraining the current nonjudicial foreclosure sale of Plaintiff's Property;

10 2) For judgment that Real Time Resolutions, Inc. and MTC Financial, Inc., d/b/a
11 Trustee Corps violated §1692f(6)(A) and (B) of the Fair Debt Collection Practices Act;

12 3) For judgment that Real Time Resolutions, Inc., violated Regulation X of
13 RESPA;

14 4) For judgment that all Defendants have violated the Washington Consumer
15 Protection Act;

16 5) For judgment that all Defendants have violated the Washington Deed of Trust
17 Act:

20 7) For recovery of all resulting damages from the Defendants' violations of the
21 FDCPA, RESPA, including statutory damages, actual damages, and attorney fees and costs as
22 allowed under each of these federal statutes:

23 8) For recovery of all resulting damages authorized by the Washington Consumer
24 Protection Act, RCW 19.86.090, including treble damages and attorney fees and costs;

25 9) For recovery of all resulting damages as authorized by the Washington Deed of
26 Trust Act: RCW 61.24 et seq.

10) For pre-judgment interest on the above amounts as authorized by law;

